

TOWN OF CUSHING

TOWER ORDINANCE

SECTION 1: PURPOSE AND APPLICATION

This ordinance provides a process and standards for review and approval of certain proposed vertical structures. Additional standards in the Shoreland Zone Ordinance may apply.

Vertical structures and tower facilities placed in service after the date of adoption of this Ordinance, such as commercial wireless telecommunication towers and their emitting devices (WTTs), 'high voltage' transmission line supports, and similar structures having no floor area shall meet the standards in Section 4 below, except that elevated wind energy conversion systems will be addressed in a separate ordinance.

Flagpoles, antennas, and utility poles 40 feet or less in height are exempt from the standards and review required by this Ordinance.

SECTION 2: AUTHORITY

This ordinance is authorized under the authority granted to the Town by the statutes of the State Maine, and in accordance with the provisions of 30-A M.R.S.A. §§ 3001, 4312 et seq.

SECTION 3: REVIEW AND APPROVAL PROCESS

3.1 Approval Required

- a. No person shall construct or expand the use of a tower facility without approval by the Code Enforcement Officer (CEO).
- b. Except for WTTs, a tower approval is valid as long as the tower continues to meet the standards of approval.
- c. Approval of a WTT is valid for three years. A three-year extension shall be granted by the Code Enforcement Officer if evidence that emissions from the tower comply with FCC emission standards is submitted to the Town Clerk not less than 14 days prior to the end of a current approval term.

3.2 Application Procedure

- a. Before filing an application for approval with the Town Clerk, an applicant shall meet with the CEO to review ordinance provisions, submittal requirements and the review process. If the application requires review by the Planning Board, that approval shall be a precondition for review under this Ordinance.
- b. The CEO shall review applications and make written findings concerning the proposed facility's compliance with this ordinance.
- c. On receipt of an application and the prescribed fee, the Town Clerk shall issue the applicant a dated receipt. Within fourteen (14) days, the CEO shall determine whether the application meets the submittal requirements, and shall notify the applicant in writing of his findings.

1. If the application is incomplete, the CEO shall notify the applicant of the specific information that is required to complete the application.
2. If the application is complete, the CEO shall so notify the applicant. Within seven (7) days of receiving notice, the applicant shall notify property owners within 500 feet of the subject property by registered return-receipt-requested mail that an application for its approval has been submitted to the CEO, specifying its location and general description, and shall provide the Town Clerk with the receipts.
- d. Within thirty (30) days of receiving a complete application, the CEO shall approve, approve with conditions, or deny the application and shall so inform the applicant in writing, together with the findings on which the action is based. The CEO shall approve the application if it complies with the provisions of Section 4 of this ordinance.

3.3 Submittal Requirements

The following materials shall be submitted as part of the application:

- a. Documentation of the applicant's right, title and interest in the property where the facility is proposed to be located, and the name and address of the property owner and of the applicant.
- b. An MDOT (or Town of Cushing) driveway or entrance access approval.
- c. A copy of an Assessor's map showing the property, its map and lot number, address, means of access, and homes within 500 feet.
- d. A site plan at 1"=30 feet of the tower vicinity showing boundaries, the location and height of the proposed vertical structure, its setbacks from property lines and overhead utility lines, and any wetland or water body.
- e. A written description of the proposed facility and its use and users.
- f. Details of proposed lighting, signage and deterrence of public access.
- g. A review fee, which shall be set from time to time by the Selectmen.
- h. For a WTT, a copy of the Federal Communications Commission license.

SECTION 4: STANDARDS OF REVIEW

Applications shall comply with the following standards:

4.1 Right Title and Interest

The applicant shall provide evidence of right title and interest to locate the facility on the property.

4.2 Tower Location

- a. The vertical structure shall be set back not less than 110% of its height from
 1. all property lines, unless restrictive easements on abutting parcels secure the required setback, and
 2. overhead utility lines unless written permission is obtained from the utility.
- b. Vegetation in the setback shall be disturbed only for a vehicular access.

4.3 Tower Access

- a. Access to the facility shall be suitable for construction, maintenance and emergency access.
- b. A tower installation shall provide measures to deter unauthorized access.

4.4 Tower Lighting

Lighting for a tower shall be mounted no higher than eight feet above grade, shall direct light only downward, shall be shielded to contain direct illumination onto existing grades within the boundaries of the property, and shall be operated only for inspection and maintenance.

4.5 Tower Signage

Towers shall display no signs or graphics except for information signs mounted no higher than eight feet above grade identifying ownership, danger, emergency actions, and prohibition of unauthorized access.

4.6 Tower Dimensions

Maximum tower height above average existing grade at its base shall be 120 feet.

4.7 WTT Collocation.

A new or expanded WTT must be designed and constructed to accommodate future collocation of at least three additional providers' facilities.

4.8 Abandonment

Upon approval of an application and before issuance of a permit, the applicant shall provide the Town with an irrevocable letter of credit in the amount of \$10,000 to secure the cost of removing an abandoned tower. This security shall be renewed not less than sixty days prior to expiration of any current letter of credit, at which time the Town shall release the applicant from the prior letter of credit. Failure to renew the letter shall be considered abandonment of the tower.

A tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the Code Enforcement Officer shall require the applicant or successor to remove the tower within 60 days, and the Town shall draw on the letter of credit as a protection against failure of the applicant or successor to comply,

On failure of the applicant or successor to renew a letter of credit, or on failure of the applicant or successor to remove the tower as required by the Code Enforcement Officer, the Town may enter the site of an abandoned tower, remove the tower, and draw on the letter of credit to defray its costs.

SECTION 5: AMENDMENT OF AN APPROVED APPLICATION

Changes to an approved application shall be reviewed in accordance with Section 3.

SECTION 7: APPEAL

Any aggrieved party having proper standing may appeal a decision of the CEO under this ordinance to the Cushing Board of Appeals within thirty (30) days of the date the CEO issues a written decision.

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.

SECTION 8: VIOLATIONS AND ENFORCEMENT

Violations of this ordinance are punishable in accordance with the provisions of 30-A M.R.S.A. § 4452. Violators shall be subject to a fine of a minimum of \$100.00 for each violation, up to a maximum of \$2500, or up to \$25,000 if the applicant has had a previous conviction within 2 years. Each day that a violation continues shall constitute a separate violation.

SECTION 9: CONFLICTS

Whenever a provision of this ordinance conflicts with or is inconsistent with a provision of any other ordinance, regulation or statute administered by the Town or State, the more restrictive provision shall control.

SECTION 10: SEVERABILITY

The invalidity of any section, subsection, clause, phrase or word of this ordinance shall not be held to invalidate any other section, subsection, paragraph, sentence, clause, phrase or word of this ordinance.

SECTION 11: AMENDMENT

This ordinance may be amended by the voters of the Town of Cushing following a duly publicized public hearing.

SECTION 12: DEFINITIONS

Height of a vertical structure: The vertical measurement from the lowest finish grade at the base of the structure to the highest point of the structure, including any antenna or component.

High voltage: 345 kV (345,000 volts)

Professional Engineer: an engineer licensed in the State of Maine and qualified to provide services required under this Ordinance.

Tower. A vertical structure with no floor area.

Adopted _____

Town Clerk

Date